

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JAMES BATES,

Defendant-Appellant.

UNPUBLISHED
February 17, 2004

No. 244414
Saginaw Circuit Court
LC No. 02-021045-FC

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for first-degree home invasion, MCL 750.110a(2), assault with intent to murder, MCL 750.83, and felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant has abandoned an ineffective assistance of counsel claim. No motion to remand was filed in this Court within the time requirement. MCR 7.211(C)(1)(a). Defendant has given this Court no indication how he believes trial counsel was ineffective. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997).

Defendant has not shown that his right to a fair trial was affected by the prosecutor's statement in closing argument that defendant was lying. Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). A prosecutor may argue from the facts that the defendant is not worthy of belief. *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996). Here, the prosecutor based his assertion that defendant was lying on the contrast between his testimony and that of the other witnesses. The prosecutor did not give any indication that he had any special knowledge about the truth, and there is no error affecting the outcome of the case. *People v Bahoda*, 448 Mich 261, 276-277; 531 NW2d 659 (1995).

Defendant asserts that the trial court failed to properly score sentencing guidelines variables OV 9, number of victims, and OV 4, psychological injury to a victim. The sentencing court has discretion in determining the number of points to be scored provided that there is evidence on the record which adequately supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

MCL 777.39(2)(a) provides that each person who was placed in danger of injury or loss of life is to be counted as a victim. Defendant's children were in the apartment at the time of the incident, and they were called into the bathroom to say good-bye to their mother, while defendant held a loaded revolver. MCL 777.34(1)(a) concerns psychological injury to the victim, and is scored 10 points if the victim incurred a serious psychological injury that may require treatment. The fact that treatment has not been sought is not conclusive. MCL 777.34(2). Given the facts of the case, the court could reasonably infer that the victims suffered serious psychological injuries that may require professional treatment.

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood